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PROCEDURAL, INSTITUTIONAL AND LEGAL MATTERS

DESIGNATION OF A PERMANENT SECRETARIAT AND ARRANGEMENTS FOR ITS FUNCTIONING

Note by the interim secretariat

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I. INTRODUCTION

A. Convention provisions

1. This is a new item on the agenda of the Committee.

2. The item is derived from Article 8 of the Convention. That Article:

(a) Establishes that the Convention shall have a secretariat;

(b) Lists the functions of the secretariat; and

(c) Provides that the Conference of the Parties (COP) shall, at its first session, "designate a permanent secretariat and make arrangements for its functioning."

3. Article 21.1 is also relevant: it provides that the functions referred to in Article 8 are to be carried out on an interim basis by the secretariat established under General Assembly resolution 45/212, referred to as "the interim secretariat" in Article 21.2.

B. Scope of the note

4. This note advances some preliminary considerations concerning options available to the COP in selecting an institutional framework for its permanent secretariat and in making related financial and staffing arrangements (see section IV). The question of the physical location of the permanent secretariat is considered in this context. By way of background, the note briefly describes the interim secretariat arrangements (section II) and indicates the need for a transition from these to the permanent secretariat (section III).

C. Possible action by the Committee

5. After considering this note, the Committee may wish to give guidance to the interim secretariat on the further exploration of preferred options for the permanent secretariat, as well as on the nature of that secretariat's functions and its work programme. On this basis, the interim secretariat could undertake the necessary consultations and present to the Committee at its tenth session a more detailed report on this item, possibly including elements of a work programme and budget for the permanent secretariat.

II. PRESENT SITUATION

6. Institutionally, the interim secretariat is part of the United Nations Secretariat, administered under United Nations staff and financial regulations. It is located in the Department of Policy Coordination and Sustainable Development (DPCSD); the head of the interim secretariat reports to the Under-Secretary-General for Policy Coordination and Sustainable Development. The post of the head of the interim secretariat is at the D.2 level.

7. The core staff of the interim secretariat, including the post of its head, as well as some of its other expenses, are funded by the United Nations programme budget (subprogramme "Protection of global climate" in the section of the budget covering DPCSD). Some additional staff are provided by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP). Despite an increasing workload, these provisions have

remained essentially unchanged since the establishment of the secretariat in 1991, under General Assembly resolution 45/212; they have been supplemented since early 1993 by some staff support (substantive and administrative) from DPCSD. The balance of the interim secretariat's expenses -- including all responses to new demands for substantive services to the Convention process and for support for technical cooperation -- is met by voluntary extrabudgetary contributions, including bilateral staffing arrangements.

8. The interim secretariat is located in United Nations premises in Geneva. It does not pay rent for its current office space. It has access to United Nations conference services, which are available free of charge, within the limits of the United Nations programme budget and the calendar of conferences.

9. Policy guidelines for the work of the interim secretariat are derived from the Convention and the decisions of the Committee, as well as from relevant resolutions of the General Assembly. Within this framework, the head of the interim secretariat seeks advice as needed from the Chairman and Officers of the Committee and its Working Groups.

III. TRANSITION TO THE PERMANENT SECRETARIAT

10. According to the Convention, the interim secretariat is to function until the completion of the first session of the COP (COP 1). However, some time will be needed beyond COP 1 to set up the new institutional arrangements, to arrange for funding on a new basis, to secure adequate premises and to mobilize staff for the permanent secretariat. This would be so even if, in the simplest of cases, the permanent secretariat were to be set up within the United Nations in Geneva, on the foundations of the interim secretariat.

11. With COP 1 scheduled for March/April 1995, it is reasonable to anticipate that the remainder of 1995 would be a transitional period during which the interim arrangements would still hold. This is, indeed, the working hypothesis for the current funding and staffing arrangements of the interim secretariat, within and outside the United Nations programme budget. The start-up date for the permanent secretariat would thus be 1 January 1996, which would coincide with the start of a new United Nations programme budget biennium (1996-1997).

IV. OPTIONS FOR THE PERMANENT SECRETARIAT

12. In designating a permanent secretariat, the COP will wish to make a choice that will best promote the effective implementation of the Convention and the pursuit of its objectives. In making practical arrangements for the secretariat, it will be necessary to keep a number of other factors in view, including cost, means of financing, budgetary responsiveness, administrative efficiency, managerial effectiveness and possibilities for programme coordination and cost savings through collaboration with other secretariats. These factors should be kept in mind when considering the following questions.

A. Institutional framework

1. Should the permanent secretariat be linked to an existing organization?

13. Once it enters into force, the Convention, with its organs, will constitute a new

international entity, with its own legal personality. The COP will have the option of setting up a permanent secretariat that is independent of any existing organization. The advantages of this option could include political visibility, administrative autonomy and flexibility. The disadvantages may include high administrative overheads (need for financial and staff rules, costs of administration) and restricted or costly access to common services (notably conference services). In addition, an independent organization would have to constitute its own financial reserve to cover temporary shortages in the inflow of contributions.

14. The balance of these considerations will be affected by the scale of secretariat operations under the Convention. This will depend, in turn, on the demands for secretariat services arising from evolving Convention needs relating to scientific and technological assessment and advice, review of implementation, financial and technical cooperation and dispute settlement. A large-scale process may justify institutional independence; a small-scale operation would benefit from a cost-effective institutional linkage.

15. Foresight is called for in making a judgement on this question. An evolutionary option could be attractive: the COP could decide to start on a modest scale and review institutional needs as they emerge. However, once initial arrangements are made, it may not, in practice, be easy to modify the status quo. Before making an initial determination, consideration should be given to appropriate international institutional precedents, in the environmental and other fields (for example, trade and finance), in particular those involving an important element of policy review.

16. For the sake of economy in this note, the independent option is not further explored at this stage. The note proceeds on the assumption that the COP will decide initially to seek a suitable institutional anchorage for its secretariat.

17. One prospect to be mentioned before proceeding, however, is that States may consider placing different conventions related to sustainable development, together with their secretariats, under a single institutional umbrella, with a common budget and certain common services. This would be a complex operation, requiring the agreement of the Conferences of the Parties of all the conventions involved, as well as their existing host organization(s), if any. 1/ It could be a cost-effective option in the long run.

18. It may be noted in this context that the promotion of the efficacy of international legal instruments, inter alia, through effective administrative mechanisms, is an objective of "Agenda 21" (see A/CONF.151/26(Vol. III), Chapter 39, in particular paragraph 39.3(f)). "Agenda 21" also provides for UNEP to exercise certain coordinating functions in relation to such instruments and their secretariats (see A/CONF.151/26(Vol. III), Chapter 38.1, paragraph 38.22(h)). However, since the issue of an "umbrella" facility goes beyond the scope of the Framework Convention on Climate Change, it is not discussed further in this note.

2. What would be a suitable host organization?

19. In order to place its permanent secretariat within an existing institutional framework, the COP will, in effect, have to enter into an agreement or understanding with a host organization. The latter would undertake to provide secretariat services through an entity or arrangement identifiable as "the permanent secretariat". The agreement or understanding would have to cover financial and staffing arrangements. A number of options may be envisaged for the choice of a host organization.

(a) Within or outside the United Nations?

20. Given that the Convention is, through its negotiation, signature and title, a United Nations convention, one evident option would be to seek to place its permanent secretariat within the framework of the United Nations. This symbolic link would also have a substantive justification: it would situate the secretariat in a multi-disciplinary environment that corresponds to the broad scope of a convention related to sustainable development.

21. An alternative would be to seek to link the permanent secretariat to a specialized technical agency within the United Nations system but outside the United Nations proper (for example, WMO).

(b) Where within the United Nations?

22. Possible points of attachment within the United Nations include the United Nations Secretariat (DPCSD), UNEP and the United Nations Development Programme (UNDP). A further option would set up the permanent secretariat within the United Nations Secretariat, but as a distinct entity, functioning outside existing departmental or programme structures.

- Criteria related to intergovernmental overview

23. In choosing among these options, one criterion would be to locate the permanent secretariat close to intergovernmental processes that could interact constructively with the work of the COP and relate that work to broader intergovernmental activities in support of sustainable development. From that perspective, there may be merit in locating the permanent secretariat in DPCSD, so as to facilitate linkages between the COP and the Commission on Sustainable Development. Such linkages would contribute to the oversight by the Commission of the follow up of the United Nations Conference on Environment and Development, in particular the implementation of "Agenda 21".

- Criteria related to programmes

24. Another type of criterion for choosing among these options relates to the extent to which each option provides the right substantive environment for the work of the permanent secretariat and encourages inter-secretariat collaboration and coordination. In fact, within a generally hospitable institutional environment, programme orientation and collaboration may result more from managerial vision, good communications and physical proximity than from organizational structures. For example, the interim secretariat, located in DPCSD, has been able to make full use of the services of the UNEP/WMO Information Unit for Climate Change (IUCC); to work very closely with the secretariat of the WMO/UNEP Intergovernmental Panel on Climate Change (IPCC); to launch a joint project with the UNEP Climate Unit, and so on.

25. Nevertheless, it could be argued that:

(a) Cost-effective sharing of work with related convention secretariats would be favoured by location within DPCSD (through linkages with work on desertification, if the convention on that subject will be serviced by that department) or within UNEP (through linkages with work on ozone depletion and biological diversity, notably in relation to the Global Environment Facility);

(b) Leveraging of programme activities in support of the Convention would be encouraged by attachment to UNEP (through linkages with its Climate Unit) or to UNDP (through linkages with its capacity-building activities).

26. An organic link to the capacity-building activities of UNDP would add an important dimension to the perspectives of the permanent secretariat, one which could be of growing importance as developing countries come to play their full part in the implementation of the Convention. Easy access to the country network of UNDP would also be an asset.

- Administrative and managerial criteria

27. Other criteria determining choice have to do with administrative and managerial efficiency. These may be weighty in the final calculation because of financial constraints.

28. Any of the above-mentioned options would place the permanent secretariat within an established administrative framework, including financial and staff rules and regulations. Influences on the choice of institutional location could arise from differences in administrative efficiency and flexibility among the possible host organizations, in particular in relation to the efficient receipt and administration of extrabudgetary funds, the engagement of staff paid for by such funds and an appropriate delegation to the permanent secretariat of administrative authority over such funds.

29. A related factor is the ability of the head of the permanent secretariat, in different institutional settings, to make a constructive input to administrative and budgetary processes and decisions that affect the functioning of the secretariat. This ability is related to the weight that will be given to the decisions of the COP on its work programme and budget in the central budgetary decisions of the host organization. It is also conditioned by the level of the post of executive head, its reporting line in the hierarchy and its institutional proximity to the centres of decision making. These considerations, too, may have a bearing on institutional choice.

B. Financial and staffing arrangements

(a) Cost-sharing with a host organization

30. Normally, the Parties to a Convention are responsible for meeting its operating costs. However, in seeking to place the permanent secretariat within the framework of a host organization, it may be possible for the COP to negotiate an arrangement for sharing the costs of the Convention process and its secretariat between the budget of the host organization and the Parties to the Convention. If the number of Parties to the Convention is less than the number of States members of the organization that hosts its secretariat, such a cost-sharing arrangement would have to be accepted by those of the latter States that are not Parties to the Convention. Approaches to this question may differ, as between a host organization with an assessed budget and one whose budget is derived principally from voluntary contributions.

31. One possibility that could be explored with a potential host organization is to anchor the Convention secretariat in its budget, while meeting specified categories of costs from extrabudgetary contributions. The budgetary anchorage could be designed, in the first place, to ensure free access by the Convention secretariat to common infrastructural services (notably administration, finance, personnel and conference services). It might also be possible to establish

a financial "safety net", whereby cash flow shortages owing to delayed contributions could be covered by temporary advances from the host organization. This would be an attractive alternative to constituting a cash reserve from extrabudgetary contributions.

32. It is conceivable that, in addition, the host organization might agree to bear a share of the direct operating costs of the permanent secretariat. This share could be limited to the expenses related to certain core secretariat functions (for example, executive direction, organization of the intergovernmental process, external relations, legal advice, administrative support). The post of head of the secretariat could be part of this core. Such an arrangement would be similar to the existing one for the interim secretariat.

33. Other costs, such as those for specialized substantive services, information systems, data processing, technical cooperation and public information, as well as the costs of participation by delegations of eligible Parties, would be covered by extrabudgetary contributions or financed through projects. Extrabudgetary contributions would be administered and audited under the rules and regulations of the host organization.

34. In the case of a cost-sharing arrangement, there would need to be a responsive link between the decisions of the Parties regarding their secretariat's work programme and the decisions of the host organization on the provision of resources to that programme through its own budget.

35. If such a cost-sharing arrangement were to be envisaged between the COP and the United Nations, it would be necessary for this to be approved in principle by the General Assembly at its forty-ninth session in 1994, so that timely provision could be made in 1995 in the proposed United Nations programme budget for 1996-1997.

(b) Assessed contributions

36. In order to ensure the smooth operation of the Convention processes and a balanced staffing structure of the permanent secretariat, it would be necessary to have a predictable funding base for the Convention. Continuation of the present system of purely voluntary contributions to a trust fund for secretariat expenses would not be adequate, even as a supplement to a core budget. It would be necessary to establish a scale of contributions by Parties; this could be based on the United Nations scale of budgetary assessments, appropriately adjusted. Economic and environmental factors relevant to the nature and objective of the Convention might be considered for inclusion in such a scale.

37. Experience with financial arrangements for the secretariats of other conventions related to sustainable development may give some useful pointers. Summary information on such arrangements could be incorporated, if the Committee so desires, in the next report on the subject of the permanent secretariat.

38. Another element to be borne in mind is the cost of ensuring adequate scientific and technological assessments as inputs for the Convention processes. At present, such assessments are being channelled through the IPCC, which has experienced difficulty in mobilizing the finance it needs for this purpose.

(c) Voluntary contributions

39. Financial support for the participation of developing country Parties and other eligible Parties in the work of the COP and its subsidiary bodies could be provided, as hitherto, from a trust fund fed by voluntary contributions.

(d) Staffing arrangements

40. Within the context of arrangements with a host organization, it may be necessary to make provision for the COP to express its views on certain aspects of staffing arrangements for the permanent secretariat. One issue that is likely to be of concern to the COP is the determination of the characteristics of the post of head of the permanent secretariat, including the level of the post and the term of office of the incumbent, as well as the role of the COP in the nomination or appointment of the head of the secretariat.

(e) Administrative and budgetary review

41. The COP may see merit in an arrangement whereby a representative group of Parties would review administrative and budgetary proposals relating to the permanent secretariat before they are considered by the COP.

C. Physical location

42. The first question for COP 1 to consider regarding the physical location of the permanent secretariat is whether or not to base it in Geneva, where the interim secretariat is located. A Geneva location would have the merit of continuity, not least in staffing, and of a productive proximity to other related secretariats located in the same city.

43. The imminent relocation of the interim secretariat to the Geneva Executive Centre will place it in the same premises as a number of convention secretariats within the UNEP framework. This could also be a convenient location for the permanent secretariat. An alternative option in Geneva is that offered by WMO, to locate the Convention secretariat in the new WMO building projected for completion in 1997. This would place the secretariat next to the core secretariat of the IPCC, as well as of others dealing with global climate matters, namely the World Climate Programme and its World Climate Research Programme and the Global Climate Observing System. In both cases, it would be necessary to examine the adequacy of the accommodation offered.

44. Suitable locations other than Geneva could also be considered by COP 1, if proposed by potential host countries or if they appeared desirable in consequence of the preferred institutional framework for the permanent secretariat.

45. The relative economic and operational merits of the various alternative locations and premises would have to be assessed.

D. Policy guidelines for the permanent secretariat

46. Whatever the institutional arrangements adopted, policy guidelines for the permanent secretariat will be derived from the Convention and from the decisions of the COP and its subsidiary bodies. Within this framework, the head of the secretariat will seek advice as needed from the President and Officers of the COP and of its subsidiary bodies.

Note

1/ The World Intellectual Property Organization is an example of such an umbrella organization, involving a unitary system of contributions to all conventions covered by it.

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